

# TEXT OF PROPOSED LAWS

## PROPOSITION 73

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

### SECTION 1. Title

This measure shall be known and may be cited as the Parents' Right to Know and Child Protection Initiative.

### SEC. 2. Declaration of Findings and Purposes

The people of California have a special and compelling interest in and responsibility for protecting the health and well-being of children, ensuring that parents are properly informed of potential health-related risks to their children, and promoting parent-child communication and parental responsibility.

### SEC. 3. Parental Notification

Section 32 is added to Article I of the California Constitution, to read:

*SEC. 32. (a) For purposes of this section, the following terms shall be defined to mean:*

*(1) "Abortion" means the use of any means to terminate the pregnancy of an unemancipated minor female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the unborn child, a child conceived but not yet born. For purposes of this section, "abortion" shall not include the use of any contraceptive drug or device.*

*(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.*

*(3) "Notice" means a written notification, signed and dated by a physician or his or her agent and addressed to a parent or guardian, informing the parent or guardian that the unemancipated minor is pregnant and that she has requested an abortion.*

*(4) "Parent or guardian" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.*

*(5) "Unemancipated minor" means a female under the age of 18 years who has not entered into a valid marriage and is not on active duty with the armed services of the United States and has not received a declaration of emancipation under state law. For the purposes of this section, pregnancy does not emancipate a female under the age of 18 years.*

*(6) "Physician" means any person authorized under the statutes and regulations of the State of California to perform an abortion upon an unemancipated minor.*

*(b) Notwithstanding Section 1 of Article I, or any other provision of this Constitution or law to the contrary and except in a medical emergency as provided for in subdivision (f), a physician shall not perform an abortion upon a pregnant unemancipated minor until after the physician or the physician's agent has first provided written notice to a parent or guardian either personally as provided for in subdivision (c) and a reflection period of at least 48 hours has elapsed after personal delivery of notice; or until the physician can presume that notice has been delivered by mail as provided in subdivision (d) and a reflection period of at least 48 hours has elapsed after presumed delivery of notice by mail; or until the physician or the physician's agent has received from a parent or guardian a written waiver of notice as provided for in subdivision (e); or until the physician has received a copy of a waiver of notification from the court as provided in subdivision (h), (i), or (j). A copy of any notice or waiver shall be retained with the unemancipated minor's medical records. The physician or the physician's agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this section.*

*(c) The written notice shall be delivered to the parent or guardian personally by the physician or the physician's agent. A form for the*

*notice shall be prescribed by the State Department of Health Services. The notice form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.*

*(d) In lieu of the personal delivery required in subdivision (c), written notice may be made by certified mail addressed to the parent or guardian at the parent's or guardian's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. To help ensure timely notice, a copy of the written notice shall also be sent at the same time by first-class mail to the parent or guardian. Notice can only be presumed to have been delivered under the provisions of this subdivision at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.*

*(e) Notice of an unemancipated minor's intent to obtain an abortion and the reflection period of at least 48 hours may be waived by a parent or guardian. The waiver must be in writing, on a form prescribed by the State Department of Health Services, signed by a parent or guardian, dated, and notarized. The written waiver need not be notarized if the parent or guardian personally delivers it to the physician or the physician's agent. The form shall include the following statement: **"WARNING. It is a crime to knowingly provide false information to a physician or a physician's agent for the purpose of inducing a physician or a physician's agent to believe that a waiver of notice has been provided by a parent or guardian."** The waiver form shall be bilingual, in English and Spanish, and also available in English and each of the other languages in which California Official Voter Information Guides are published.*

*(f) Notice shall not be required under this section if the attending physician certifies in the unemancipated minor's medical records the medical indications supporting the physician's good-faith clinical judgment that the abortion is necessary due to a medical emergency as defined in paragraph (2) of subdivision (a).*

*(g) Notice shall not be required under this section if waived pursuant to this subdivision and subdivision (h), (i), or (j). If the pregnant unemancipated minor elects not to permit notice to be given to a parent or guardian, she may file a petition with the juvenile court. If, pursuant to this subdivision, an unemancipated minor seeks to file a petition, the court shall assist the unemancipated minor or person designated by the unemancipated minor in preparing the petition and notifications required pursuant to this section. The petition shall set forth with specificity the unemancipated minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the unemancipated minor, her guardian ad litem, or her counsel. If the guardian ad litem requests an extension, that extension may not be granted for more than one court day without the consent of the unemancipated minor or her counsel. The unemancipated minor shall be notified of the date, time, and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.*

*(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notice of a parent or guardian.*

*(2) If the judge finds, by clear and convincing evidence, that notice of a parent or guardian is not in the best interests of the unemancipated minor, the judge shall authorize a waiver of notice. If the finding that notice of a parent or guardian is not in the best interests of the minor is based on evidence of physical, sexual, or emotional abuse by a parent or guardian, the court shall ensure that such evidence is brought to the attention of the appropriate county child protective agency.*

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(3) If the judge does not make a finding specified in paragraph (1) or (2), the judge shall deny the petition.

(i) If the judge fails to rule within the time period specified in subdivision (g) and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(j) The unemancipated minor may appeal the judgment of the juvenile court at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the hearing shall be held within three court days of filing the notice of appeal. The unemancipated minor shall be notified of the date, time, and place of the hearing. Judgment shall be entered within one court day of submission of the matter. The appellate court shall ensure that the unemancipated minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing an appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) The Judicial Council shall prescribe, by rule, the practice and procedure for petitions for waiver of parental notification, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings. Each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the unemancipated minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted under paragraph (1) or (2) of subdivision (h), deemed granted under subdivision (i), denied under paragraph (3) of subdivision (h), and granted and denied under subdivision (j), said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the unemancipated minors filing petitions.

(l) The State Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the minor or her parent(s) or guardian by name or request other information by which the minor or her parent(s) or guardian might be identified. The forms shall include the date of the procedure and the unemancipated minor's month and year of birth, the duration of the pregnancy, the type of abortion procedure, the physician who performed the abortion, and the facility where the abortion was performed. The forms shall also indicate whether the abortion was performed at least 48 hours after either personal delivery of a notice pursuant to subdivision (c) or presumed delivery of a notice by mail pursuant to subdivision (d) to a parent or guardian; or was an abortion performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); or was an emergency abortion performed without a notice pursuant to subdivision (f); or was an abortion performed after a judicial waiver of notice pursuant to paragraph (1) or (2) of subdivision (h) or subdivision (i) or (j).

(m) The physician who performs an abortion on an unemancipated minor shall within one month file a dated and signed report concerning it with the State Department of Health Services on forms prescribed pursuant to subdivision (l). The identity of the physician shall be kept confidential and shall not be subject to disclosure under the California Public Records Act.

(n) The State Department of Health Services shall compile an annual statistical report from the information specified in subdivision (l). The annual report shall not include the identity of any physician who filed a report as required by subdivision (m). The compilation shall include statistical information on the numbers of abortions by month and by county where performed, the minors' ages, the duration of the pregnancies, the types of abortion procedures, and the numbers of abortions performed after notice to a parent or guardian pursuant to subdivision (c) or (d); the numbers of emergency abortions performed without notice to a parent or guardian pursuant to subdivision (f); the numbers performed after a parent's or guardian's waiver of notice pursuant to subdivision (e); and the number of abortions performed after judicial waivers pursuant to paragraph (1) or (2) of subdivision (h) or subdivision (i) or (j). The annual statistical report shall be made available to county public health officials, Members of the Legislature,

the Governor, and the public.

(o) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this section shall be liable for damages in a civil action brought by the unemancipated minor, her legal representative, or by a parent or guardian wrongfully denied notification. A person shall not be liable under this section if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor or other persons regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subdivision, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of ten thousand dollars (\$10,000). In addition to any damages awarded under this subdivision, the plaintiff shall be entitled to an award of reasonable attorney's fees. Nothing in this section shall abrogate, limit, or restrict the common law rights of parents or guardians, or any right to relief under any theory of liability that any person or any state or local agency may have under any statute or common law for any injury or damage, including any legal, equitable, or administrative remedy under federal or state law, against any party, with respect to injury to an unemancipated minor from an abortion.

(p) Other than an unemancipated minor who is the patient of a physician, or other than the physician or the physician's agent, any person who knowingly provides false information to a physician or a physician's agent for the purpose of inducing the physician or the physician's agent to believe that pursuant to this section notice has been or will be delivered, or that a waiver of notice has been obtained, or that an unemancipated minor patient is not an unemancipated minor, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars (\$1,000).

(q) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), paragraph (1) or (2) of subdivision (h), or subdivision (i) or (j), except where the particular circumstances of a medical emergency as defined in paragraph (2) of subdivision (a) or her own mental incapacity precludes obtaining her consent, a physician shall not perform or induce an abortion upon an unemancipated minor except with the consent of the unemancipated minor herself.

(r) Notwithstanding any notices delivered pursuant to subdivision (c) or (d) or waivers received pursuant to subdivision (e), paragraph (1) or (2) of subdivision (h), or subdivision (i) or (j), an unemancipated minor who is being coerced by any person through force, threat of force, or threatened or actual deprivation of food or shelter to consent to undergo an abortion may apply to the juvenile court for relief. The court shall give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

(s) This section shall not take effect until 90 days after the election in which it is approved. The Judicial Council shall, within these 90 days, prescribe the rules, practices, and procedures and prepare and make available any forms it may prescribe as provided in subdivision (k). The State Department of Health Services shall, within these 90 days, prepare and make available the forms prescribed in subdivisions (c), (e), and (l).

(t) If any one or more provision, subdivision, sentence, clause, phrase, or word of this section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subdivision, sentence, clause, phrase, or word of this section would have been approved by voters irrespective of the fact that any one or more provision, subdivision, sentence, clause, phrase, or word might be declared unconstitutional or invalid.

(u) Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this section, nothing in this section shall be construed to grant, secure, or deny any other rights, duties, privileges, conditions, and limitations relating to abortion or the funding thereof.